

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-3701, 2.2-3707, 2.2-3707.1, 2.2-3708, 2.2-3708.1, 2.2-3711, 2.2-
2 3712, 10.1-104.7, 23.1-1303, and 54.1-2400.2 of the Code of Virginia, relating to the Virginia
3 Freedom of Information Act; public access to meetings of public bodies.

4 **Be it enacted by the General Assembly of Virginia:**

5 **1. That §§ 2.2-3701, 2.2-3707, 2.2-3707.1, 2.2-3708, 2.2-3708.1, 2.2-3711, 2.2-3712, 10.1-104.7, 23.1-**
6 **1303, and 54.1-2400.2 of the Code of Virginia are amended and reenacted as follows:**

7 **§ 2.2-3701. Definitions.**

8 As used in this chapter, unless the context requires a different meaning:

9 "Closed meeting" means a meeting from which the public is excluded.

10 "Electronic communication" means any audio or combined audio and visual communication
11 method.

12 "Emergency" means an unforeseen circumstance rendering the notice required by this chapter
13 impossible or impracticable and which circumstance requires immediate action.

14 "Information" as used in the exclusions established by §§ 2.2-3705.1 through 2.2-3705.7, means
15 the content within a public record that references a specifically identified subject matter, and shall not be
16 interpreted to require the production of information that is not embodied in a public record.

17 "Meeting" or "meetings" means the meetings including work sessions, when sitting physically,
18 or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as
19 an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the
20 constituent membership, wherever held, with or without minutes being taken, whether or not votes are
21 cast, of any public body. Neither the gathering of employees of a public body nor the gathering or
22 attendance of two or more members of a public body (i) at any place or function where no part of the
23 purpose of such gathering or attendance is the discussion or transaction of any public business, and such
24 gathering or attendance was not called or prearranged with any purpose of discussing or transacting any
25 business of the public body, or (ii) at a public forum, candidate appearance, or debate, the purpose of

26 which is to inform the electorate and not to transact public business or to hold discussions relating to the
27 transaction of public business, even though the performance of the members individually or collectively
28 in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be
29 deemed a "meeting" subject to the provisions of this chapter.

30 "Open meeting" or "public meeting" means a meeting at which the public may be present.

31 "Public body" means any legislative body, authority, board, bureau, commission, district or
32 agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities,
33 towns and counties, municipal councils, governing bodies of counties, school boards and planning
34 commissions; boards of visitors of public institutions of higher education; and other organizations,
35 corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall
36 include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of
37 directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee,
38 subcommittee, or other entity however designated, of the public body created to perform delegated
39 functions of the public body or to advise the public body. It shall not exclude any such committee,
40 subcommittee or entity because it has private sector or citizen members. Corporations organized by the
41 Virginia Retirement System are "public bodies" for purposes of this chapter.

42 For the purposes of the provisions of this chapter applicable to access to public records,
43 constitutional officers and private police departments as defined in § 9.1-101 shall be considered public
44 bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose
45 public records as other custodians of public records.

46 "Public records" means all writings and recordings that consist of letters, words or numbers, or
47 their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic
48 impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data
49 compilation, however stored, and regardless of physical form or characteristics, prepared or owned by,
50 or in the possession of a public body or its officers, employees or agents in the transaction of public
51 business. Records that are not prepared for or used in the transaction of public business are not public
52 records.

53 "Regional public body" means a unit of government organized as provided by law within defined
54 boundaries, as determined by the General Assembly, ~~whose members are appointed by the participating~~
55 ~~local governing bodies, and such~~ which unit includes two or more ~~counties or cities~~ localities.

56 "Scholastic records" means those records containing information directly related to a student or
57 an applicant for admission and maintained by a public body that is an educational agency or institution
58 or by a person acting for such agency or institution.

59 **§ 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.**

60 A. All meetings of public bodies shall be open, except as provided in §§ 2.2-3707.01 and 2.2-
61 3711.

62 B. No meeting shall be conducted through telephonic, video, electronic or other communication
63 means where the members are not physically assembled to discuss or transact public business, except as
64 provided in § 2.2-3708, 2.2-3708.1 or as may be specifically provided in Title 54.1 for the summary
65 suspension of professional licenses.

66 C. Every public body shall give notice of the date, time, and location of its meetings by ~~placing~~
67 ~~the notice in a prominent public location at which notices are regularly posted and in the office of the~~
68 ~~clerk of the public body, or in the case of a public body that has no clerk, in the office of the chief~~
69 ~~administrator;~~

70 1. Posting such notice on its publicly available website, if any;

71 2. Placing such notice in a prominent public location at which notices are regularly posted; and

72 3. Placing such notice at the office of the clerk of the public body or, in the case of a public body
73 that has no clerk, in the office of the chief administrator.

74 All state public bodies subject to the provisions of this chapter shall also post notice of their
75 meetings ~~on their websites and on the electronic calendar maintained by the Virginia Information~~
76 ~~Technologies Agency commonly known as the Commonwealth Calendar~~ on a central, publicly available
77 electronic calendar maintained by the Commonwealth. Publication of meeting notices by electronic
78 means by other state public bodies shall be encouraged.

79 The notice shall be posted at least three working days prior to the meeting. ~~Notices for meetings~~
80 ~~of state public bodies on which there is at least one member appointed by the Governor shall state~~
81 ~~whether or not public comment will be received at the meeting and, if so, the approximate point during~~
82 ~~the meeting when public comment will be received.~~

83 D. Notice, reasonable under the circumstance, of special ~~or~~ emergency, or continued meetings
84 shall be given contemporaneously with the notice provided to the members of the public body
85 conducting the meeting.

86 E. Any person may annually file a written request for notification with a public body. The
87 request shall include the requester's name, address, zip code, daytime telephone number, electronic mail
88 address, if available, and organization, if any. The public body receiving such request shall provide
89 notice of all meetings directly to each such person. Without objection by the person, the public body
90 may provide electronic notice of all meetings in response to such requests.

91 F. At least one copy of the proposed agenda and all agenda packets and, unless exempt, all
92 materials furnished to members of a public body for a meeting shall be made available for public
93 inspection at the same time such documents are furnished to the members of the public body. The
94 proposed agendas for meetings of state public bodies where at least one member has been appointed by
95 the Governor shall state whether or not public comment will be received at the meeting and, if so, the
96 approximate point during the meeting when public comment will be received.

97 G. ~~The notice provisions of this chapter shall not apply to informal meetings or gatherings of the~~
98 ~~members of the General Assembly.~~

99 ~~H.~~ Any person may photograph, film, record or otherwise reproduce any portion of a meeting
100 required to be open. The public body conducting the meeting may adopt rules governing the placement
101 and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to
102 prevent interference with the proceedings, but shall not prohibit or otherwise prevent any person from
103 photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be
104 open. No public body shall conduct a meeting required to be open in any building or facility where such
105 recording devices are prohibited.

106 | ~~I-H.~~ Minutes shall be recorded at all open meetings. However, minutes shall not be required to
107 | be taken at deliberations of (i) standing and other committees of the General Assembly; (ii) legislative
108 | interim study commissions and committees, including the Virginia Code Commission; (iii) study
109 | committees or commissions appointed by the Governor; or (iv) study commissions or study committees,
110 | or any other committees or subcommittees appointed by the governing bodies or school boards of
111 | counties, cities and towns, except where the membership of any such commission, committee or
112 | subcommittee includes a majority of the governing body of the county, city or town or school board.

113 | Minutes, including draft minutes, and all other records of open meetings, including audio or
114 | audio/visual records shall be deemed public records and subject to the provisions of this chapter.

115 | Minutes shall be in writing and shall include (i) the date, time, and location of the meeting; (ii)
116 | the members of the public body recorded as present and absent; and (iii) a summary of the discussion on
117 | matters proposed, deliberated or decided, and a record of any votes taken. In addition, for electronic
118 | communication meetings conducted in accordance with § 2.2-3708, minutes of state public bodies shall
119 | include (a) the identity of the members of the public body at each remote location identified in the notice
120 | who participated in the meeting through electronic communications means, (b) the identity of the
121 | members of the public body who were physically assembled at the primary or central meeting location,
122 | and (c) the identity of the members of the public body who were not present at the locations identified in
123 | clauses (a) and (b), but who monitored such meeting through electronic communications means.

124 | **§ 2.2-3707.1. Posting of minutes for state boards and commissions.**

125 | All boards, commissions, councils, and other public bodies created in the executive branch of
126 | state government and subject to the provisions of this chapter shall post minutes of their meetings on
127 | such body's official public government website, ~~if any,~~ and on ~~the~~ a central electronic calendar
128 | maintained by the ~~Virginia Information Technologies Agency commonly known as the Commonwealth~~
129 | Calendar Commonwealth. Draft minutes of meetings shall be posted as soon as possible but no later
130 | than ~~ten~~ 10 working days after the conclusion of the meeting. Final approved meeting minutes shall be
131 | posted within three working days of final approval of the minutes.

132 **§ 2.2-3708. Electronic communication meetings; applicability; physical quorum required;**
133 **exceptions; notice; report.**

134 A. Except as expressly provided in subsection G of this section or § 2.2-3708.1, no local
135 governing body, school board, or any authority, board, bureau, commission, district or agency of local
136 government, any committee thereof, or any entity created by a local governing body, school board, or
137 any local authority, board, or commission shall conduct a meeting wherein the public business is
138 discussed or transacted through telephonic, video, electronic or other communication means where the
139 members are not physically assembled. Nothing in this section shall be construed to prohibit the use of
140 interactive audio or video means to expand public participation.

141 B. Except as provided in subsection G or H of this section or subsection D of § 2.2-3707.01, state
142 public bodies may conduct any meeting wherein the public business is discussed or transacted through
143 electronic communication means, provided (i) a quorum of the public body is physically assembled at
144 one primary or central meeting location, (ii) notice of the meeting has been given in accordance with
145 subsection C, and (iii) the remote locations, from which additional members of the public body
146 participate through electronic communication means, are open to the public. All persons attending the
147 meeting at any of the meeting locations shall be afforded the same opportunity to address the public
148 body as persons attending the primary or central location.

149 If an authorized public body holds an electronic meeting pursuant to this section, it shall also
150 hold at least one meeting annually where members in attendance at the meeting are physically
151 assembled at one location and where no members participate by electronic communication means.

152 C. Notice of any ~~meetings~~ regular meeting held pursuant to this section shall be provided at least
153 three working days in advance of the date scheduled for the meeting. Notice, reasonable under the
154 circumstance, of special, emergency, or continued meetings held pursuant to this section shall be given
155 contemporaneously with the notice provided to members of the public body conducting the meeting. For
156 the purposes of this subsection, "continued meeting" means a meeting that is continued to address an
157 emergency or to conclude the agenda of a meeting for which proper notice was given.

158 The notice shall include the date, time, place, and purpose for the meeting; shall identify the
159 locations for the meeting; and shall include a telephone number that may be used at remote locations to
160 notify the primary or central meeting location of any interruption in the telephonic or video broadcast of
161 the meeting to the remote locations. Any interruption in the telephonic or video broadcast of the meeting
162 shall result in the suspension of action at the meeting until repairs are made and public access restored.

163 D. ~~Agenda~~ A copy of the proposed agenda and agenda packets and, unless exempt, all materials
164 that will be distributed to members of the public body and that have been made available to the staff of
165 the public body in sufficient time for duplication and forwarding to all locations where public access
166 will be provided shall be made available to the public at the time of the meeting. Minutes of all meetings
167 held by electronic communication means shall be recorded as required by § 2.2-3707. Votes taken
168 during any meeting conducted through electronic communication means shall be recorded by name in
169 roll-call fashion and included in the minutes.

170 E. Three working days' notice shall not be required for meetings authorized under this section
171 held in accordance with subsection G ~~or that are continued to address an emergency or to conclude the~~
172 ~~agenda of the meeting for which proper notice has been given, when the date, time, place, and purpose~~
173 ~~of the continued meeting are set during the meeting prior to adjournment.~~ Public bodies conducting
174 emergency meetings through electronic communication means shall comply with the provisions of
175 subsection D requiring minutes of the meeting. The nature of the emergency shall be stated in the
176 minutes.

177 F. Any authorized public body that meets by electronic communication means shall make a
178 written report of the following to the Virginia Freedom of Information Advisory Council ~~and the Joint~~
179 ~~Commission on Technology and Science~~ by December 15 of each year:

- 180 1. The total number of electronic communication meetings held that year;
- 181 2. The dates and purposes of the meetings;
- 182 3. A copy of the agenda for the meeting;
- 183 4. The number of sites for each meeting;
- 184 5. The types of electronic communication means by which the meetings were held;

- 185 6. The number of participants, including members of the public, at each meeting location;
- 186 7. The identity of the members of the public body recorded as absent and those recorded as
187 present at each meeting location;
- 188 8. A summary of any public comment received about the electronic communication meetings;
189 and
- 190 9. A written summary of the public body's experience using electronic communication meetings,
191 including its logistical and technical experience.

192 In addition, any authorized public body shall make available to the public at any meeting
193 conducted in accordance with this section a public comment form prepared by the Virginia Freedom of
194 Information Advisory Council in accordance with § 30-179.

195 G. Any public body may meet by electronic communication means without a quorum of the
196 public body physically assembled at one location when the Governor has declared a state of emergency
197 in accordance with § 44-146.17, provided that (i) the catastrophic nature of the declared emergency
198 makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the
199 meeting is to address the emergency. The public body convening a meeting in accordance with this
200 subsection shall (a) give public notice using the best available method given the nature of the
201 emergency, which notice shall be given contemporaneously with the notice provided members of the
202 public body conducting the meeting; (b) make arrangements for public access to such meeting; and (c)
203 otherwise comply with the provisions of this section. The nature of the emergency, the fact that the
204 meeting was held by electronic communication means, and the type of electronic communication means
205 by which the meeting was held shall be stated in the minutes.

206 ~~H. [Expired].~~

207 **§ 2.2-3708.1. Participation in meetings due to personal matter; certain disabilities; distance**
208 **from meeting location for certain public bodies.**

209 A. A member of a public body may participate in a meeting governed by this chapter through
210 electronic communication means from a remote location that is not open to the public only as follows
211 and subject to the requirements of subsection B:

212 1. If, on or before the day of a meeting, a member of the public body holding the meeting notifies
213 the chair of the public body that such member is unable to attend the meeting due to ~~an emergency or a~~
214 personal matter and identifies with specificity the nature of the ~~emergency or~~ personal matter, and the
215 public body holding the meeting records in its minutes the specific nature of the ~~emergency or~~ personal
216 matter and the remote location from which the member participated. If a member's participation from a
217 remote location is disapproved because such participation would violate the policy adopted pursuant to
218 subsection B, such disapproval shall be recorded in the minutes with specificity.

219 Such participation by the member shall be limited each calendar year to two meetings ~~or 25~~
220 ~~percent of the meetings of the public body, whichever is fewer;~~

221 2. If a member of a public body notifies the chair of the public body that such member is unable
222 to attend a meeting due to a temporary or permanent disability or other medical condition that prevents
223 the member's physical attendance and the public body records this fact and the remote location from
224 which the member participated in its minutes; or

225 3. If, on the day of a meeting, a member of a regional public body notifies the chair of the public
226 body that such member's principal residence is more than 60 miles from the meeting location identified
227 in the required notice for such meeting and the public body holding the meeting records in its minutes
228 the remote location from which the member participated. If a member's participation from a remote
229 location is disapproved because such participation would violate the policy adopted pursuant to
230 subsection B, such disapproval shall be recorded in the minutes with specificity.

231 B. Participation by a member of a public body as authorized under subsection A shall be only
232 under the following conditions:

233 1. The public body has adopted a written policy allowing for and governing participation of its
234 members by electronic communication means, including an approval process for such participation,
235 subject to the express limitations imposed by this section. Once adopted, the policy shall be applied
236 strictly and uniformly, without exception, to the entire membership and without regard to the identity of
237 the member requesting remote participation or the matters that will be considered or voted on at the
238 meeting;

239 2. A quorum of the public body is physically assembled at the primary or central meeting
240 location; and

241 3. The public body makes arrangements for the voice of the remote participant to be heard by all
242 persons at the primary or central meeting location.

243 **§ 2.2-3711. Closed meetings authorized for certain limited purposes.**

244 A. Public bodies may hold closed meetings only for the following purposes:

245 1. Discussion, consideration, or interviews of prospective candidates for employment;
246 assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of
247 specific public officers, appointees, or employees of any public body; and evaluation of performance of
248 departments or schools of public institutions of higher education where such evaluation will necessarily
249 involve discussion of the performance of specific individuals. Any teacher shall be permitted to be
250 present during a closed meeting in which there is a discussion or consideration of a disciplinary matter
251 that involves the teacher and some student and the student involved in the matter is present, provided the
252 teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing
253 in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body
254 or an elected school board to discuss compensation matters that affect the membership of such body or
255 board collectively.

256 2. Discussion or consideration of admission or disciplinary matters or any other matters that
257 would involve the disclosure of information contained in a scholastic record concerning any student of
258 any Virginia public institution of higher education or any state school system. However, any such
259 student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be
260 permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if
261 such student, parents, or guardians so request in writing and such request is submitted to the presiding
262 officer of the appropriate board.

263 3. Discussion or consideration of the acquisition of real property for a public purpose, or of the
264 disposition of publicly held real property, where discussion in an open meeting would adversely affect
265 the bargaining position or negotiating strategy of the public body.

- 266 4. The protection of the privacy of individuals in personal matters not related to public business.
- 267 5. Discussion concerning a prospective business or industry or the expansion of an existing
268 business or industry where no previous announcement has been made of the business' or industry's
269 interest in locating or expanding its facilities in the community.
- 270 6. Discussion or consideration of the investment of public funds where competition or bargaining
271 is involved, where, if made public initially, the financial interest of the governmental unit would be
272 adversely affected.
- 273 7. Consultation with legal counsel and briefings by staff members or consultants pertaining to
274 actual or probable litigation, where such consultation or briefing in open meeting would adversely affect
275 the negotiating or litigating posture of the public body; ~~and consultation with legal counsel employed or~~
276 ~~retained by a public body regarding specific legal matters requiring the provision of legal advice by such~~
277 ~~counsel.~~ For the purposes of this subdivision, "probable litigation" means litigation that has been
278 specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe
279 will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit
280 the closure of a meeting merely because an attorney representing the public body is in attendance or is
281 consulted on a matter.
- 282 8. ~~In the case of boards of visitors of public institutions of higher education, discussion~~
283 Consultation with legal counsel employed or retained by a public body regarding specific legal matters
284 requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be construed to
285 permit the closure of a meeting merely because an attorney representing the public body is in attendance
286 or is consulted on a matter.
- 287 9. Discussion or consideration by boards of visitors of public institutions of higher education of
288 matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or
289 work to be performed by such institution. However, the terms and conditions of any such gifts, bequests,
290 grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and
291 accepted by a public institution of higher education in Virginia shall be subject to public disclosure upon
292 written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign

293 government" means any government other than the United States government or the government of a
294 state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity (a) created under
295 the laws of the United States or of any state thereof if a majority of the ownership of the stock of such
296 legal entity is owned by foreign governments or foreign persons or if a majority of the membership of
297 any such entity is composed of foreign persons or foreign legal entities; or ~~any legal entity (b)~~ created
298 under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a
299 citizen or national of the United States or a trust territory or protectorate thereof.

300 ~~9. In the case of~~ 10. Discussion or consideration by the boards of trustees of the Virginia
301 Museum of Fine Arts, the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation,
302 and The Science Museum of Virginia, ~~discussion or consideration~~ of matters relating to specific gifts,
303 bequests, and grants from private sources.

304 ~~10-11.~~ Discussion or consideration of honorary degrees or special awards.

305 ~~11-12.~~ Discussion or consideration of tests, examinations, or other information used,
306 administered, or prepared by a public body and excluded from this chapter pursuant to subdivision 4 of §
307 2.2-3705.1.

308 ~~12-13.~~ Discussion, consideration, or review by the appropriate House or Senate committees of
309 possible disciplinary action against a member arising out of the possible inadequacy of the disclosure
310 statement filed by the member, provided the member may request in writing that the committee meeting
311 not be conducted in a closed meeting.

312 ~~13-14.~~ Discussion of strategy with respect to the negotiation of a hazardous waste siting
313 agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if
314 the governing body in open meeting finds that an open meeting will have an adverse effect upon the
315 negotiating position of the governing body or the establishment of the terms, conditions and provisions
316 of the siting agreement, or both. All discussions with the applicant or its representatives may be
317 conducted in a closed meeting.

318 ~~14-15.~~ Discussion by the Governor and any economic advisory board reviewing forecasts of
319 economic activity and estimating general and nongeneral fund revenues.

320 ~~15-16.~~ Discussion or consideration of medical and mental health records excluded from this
321 chapter pursuant to subdivision 1 of § 2.2-3705.5.

322 ~~16-17.~~ Deliberations of the Virginia Lottery Board in a licensing appeal action conducted
323 pursuant to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales
324 agent; and discussion, consideration or review of Virginia Lottery matters related to proprietary lottery
325 game information and studies or investigations ~~exempted excluded~~ from ~~disclosure under this chapter~~
326 pursuant to subdivision 6 of § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

327 ~~17. Those portions of meetings by local government crime commissions where the identity of, or~~
328 ~~information tending to identify, individuals providing information about crimes or criminal activities~~
329 ~~under a promise of anonymity is discussed or disclosed.~~

330 18. Those portions of meetings in which the Board of Corrections discusses or discloses the
331 identity of, or information tending to identify, any prisoner who (i) provides information about crimes or
332 criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the
333 apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders
334 other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

335 19. Discussion of plans to protect public safety as it relates to terrorist activity or specific
336 cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-
337 enforcement or emergency service officials concerning actions taken to respond to such matters or a
338 related threat to public safety; discussion of information excluded from this chapter pursuant to
339 subdivision 3 or 4 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of
340 any person or the security of any facility, building, structure, information technology system, or software
341 program; or discussion of reports or plans related to the security of any governmental facility, building
342 or structure, or the safety of persons using such facility, building or structure.

343 20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-
344 124.30, or of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or
345 board of trustees of a trust established by one or more local public bodies to invest funds for
346 postemployment benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of

347 Chapter 15 of Title 15.2, or of the Rector and Visitors of the University of Virginia, acting pursuant to §
348 23.1-2210, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706,
349 regarding the acquisition, holding or disposition of a security or other ownership interest in an entity,
350 where such security or ownership interest is not traded on a governmentally regulated securities
351 exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector
352 and Visitors of the University of Virginia, prepared by the retirement system, or by the local finance
353 board or board of trustees of such a trust pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of
354 Title 15.2, or by the Virginia College Savings Plan or provided to the retirement system or the Virginia
355 College Savings Plan under a promise of confidentiality, of the future value of such ownership interest
356 or the future financial performance of the entity, and (ii) would have an adverse effect on the value of
357 the investment to be acquired, held or disposed of by the retirement system, or by the local finance board
358 or board of trustees of such a trust pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2,
359 the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in
360 this subdivision shall be construed to prevent the disclosure of information relating to the identity of any
361 investment held, the amount invested or the present value of such investment.

362 21. Those portions of meetings in which individual child death cases are discussed by the State
363 Child Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which
364 individual child death cases are discussed by a regional or local child fatality review team established
365 pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by
366 family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in
367 which individual adult death cases are discussed by the state Adult Fatality Review Team established
368 pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are
369 discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

370 22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern
371 Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any
372 persons to whom management responsibilities for the University of Virginia Medical Center or Eastern
373 Virginia Medical School, as the case may be, have been delegated, in which there is discussed

374 proprietary, business-related information pertaining to the operations of the University of Virginia
375 Medical Center or Eastern Virginia Medical School, as the case may be, including business development
376 or marketing strategies and activities with existing or future joint venturers, partners, or other parties
377 with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case
378 may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such
379 information would adversely affect the competitive position of the Medical Center or Eastern Virginia
380 Medical School, as the case may be.

381 23. ~~In the case of the Virginia Commonwealth University Health System Authority, discussion~~
382 Discussion or consideration by the Virginia Commonwealth University Health System Authority or the
383 Virginia Commonwealth University Board of Visitors of any of the following: the acquisition or
384 disposition by the Authority of real ~~or personal~~ property, equipment, or technology software or hardware
385 and related goods or services, where disclosure would adversely affect the bargaining position or
386 negotiating strategy of the Authority; ~~operational plans that could affect the value of such property, real~~
387 ~~or personal, owned or desirable for ownership by the Authority;~~ matters relating to gifts, or bequests to,
388 and fund-raising activities of, the Authority; grants and contracts for services or work to be performed
389 by the Authority; marketing or operational strategies plans of the Authority where disclosure of such
390 strategies or plans would adversely affect the competitive position of the Authority; and members of ~~its~~
391 the Authority's medical and teaching staffs and qualifications for appointments thereto; ~~and~~
392 ~~qualifications or evaluations of other employees. This exclusion shall also apply when the foregoing~~
393 ~~discussions occur at a meeting of the Virginia Commonwealth University Board of Visitors.~~

394 24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee
395 within the Department of Health Professions to the extent such discussions identify any practitioner who
396 may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

397 25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein
398 personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees
399 by or on behalf of individuals who have requested information about, applied for, or entered into prepaid

400 tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title
401 23.1 is discussed.

402 26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee
403 created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-
404 336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of
405 wireless E-911 service.

406 27. Those portions of disciplinary proceedings by any regulatory board within the Department of
407 Professional and Occupational Regulation, Department of Health Professions, or the Board of
408 Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach
409 a decision or meetings of health regulatory boards or conference committees of such boards to consider
410 settlement proposals in pending disciplinary actions or modifications to previously issued board orders
411 as requested by either of the parties.

412 28. Discussion or consideration of information excluded from this chapter pursuant to
413 subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as
414 those terms are defined in § 33.2-1800, or any independent review panel appointed to review
415 information and advise the responsible public entity concerning such records.

416 29. Discussion of the award of a public contract involving the expenditure of public funds,
417 including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where
418 discussion in an open session would adversely affect the bargaining position or negotiating strategy of
419 the public body.

420 30. Discussion or consideration of grant or loan application information excluded from this
421 chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or
422 (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology
423 Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment
424 Authority.

425 31. Discussion or consideration by the Commitment Review Committee of information excluded
426 from this chapter pursuant to subdivision 8 of § 2.2-3705.2 relating to individuals subject to
427 commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

428 32. ~~Expired.~~

429 ~~33.~~ Discussion or consideration of confidential proprietary information and trade secrets
430 developed and held by a local public body providing certain telecommunication services or cable
431 television services excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6. However, the
432 exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU
433 Authority Act (§ 15.2-7200 et seq.).

434 ~~34.~~ 33. Discussion or consideration by a local authority created in accordance with the Virginia
435 Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and
436 trade secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

437 ~~35.~~ 34. Discussion or consideration by the State Board of Elections or local electoral boards of
438 voting security matters made confidential pursuant to § 24.2-625.1.

439 ~~36.~~ 35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory
440 Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of ~~records~~
441 criminal investigative files excluded from this chapter pursuant to subdivision A 2 a of § 2.2-3706.

442 ~~37.~~ 36. Discussion or consideration by the Brown v. Board of Education Scholarship ~~Program~~
443 ~~Awards~~ Committee of information or confidential matters excluded from this chapter pursuant to
444 subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual
445 maximum scholarship award, review and consider scholarship applications and requests for scholarship
446 award renewal, and cancel, rescind, or recover scholarship awards.

447 ~~38.~~ 37. Discussion or consideration by the Virginia Port Authority of information excluded from
448 this chapter pursuant to subdivision 1 of § 2.2-3705.6 related to certain proprietary information gathered
449 by or for the Virginia Port Authority.

450 ~~39.~~ 38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System
451 acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-

452 124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia
453 College Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's
454 Investment Advisory Committee appointed pursuant to § 23.1-702 of information excluded from this
455 chapter pursuant to subdivision 25 of § 2.2-3705.7.

456 ~~40.~~39. Discussion or consideration of information excluded from this chapter pursuant to
457 subdivision 3 of § 2.2-3705.6 related to economic development.

458 ~~41.~~40. Discussion or consideration by the Board of Education of information relating to the
459 denial, suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision
460 12 of § 2.2-3705.3.

461 ~~42.~~41. Those portions of meetings of the Virginia Military Advisory Council or any commission
462 created by executive order for the purpose of studying and making recommendations regarding
463 preventing closure or realignment of federal military and national security installations and facilities
464 located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs
465 organization appointed by a local governing body, during which there is discussion of information
466 excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.2.

467 ~~43.~~42. Discussion or consideration by the Board of Trustees of the Veterans Services
468 Foundation of information excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7 related
469 to personally identifiable information of donors.

470 ~~44.~~43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission
471 of information excluded from this chapter pursuant to subdivision 23 of § 2.2-3705.6 related to certain
472 information contained in grant applications.

473 ~~45.~~44. Discussion or consideration by the board of directors of the Commercial Space Flight
474 Authority of information excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6 related
475 to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the
476 Authority and certain proprietary information of a private entity provided to the Authority.

477 ~~46.~~45. Discussion or consideration of personal and proprietary information ~~that are~~ related to the
478 resource management plan program and excluded from the provisions of this chapter pursuant to (i)

479 subdivision 25 of § 2.2-3705.6 or (ii) subsection E of § 10.1-104.7. This exclusion shall not apply to the
480 discussion or consideration of records that contain information that has been certified for release by the
481 person who is the subject of the information or transformed into a statistical or aggregate form that does
482 not allow identification of the person who supplied, or is the subject of, the information.

483 ~~47. 46.~~ (Effective July 1, 2018) Discussion or consideration by the Board of Directors of the
484 Virginia Alcoholic Beverage Control Authority of information excluded from this chapter pursuant to
485 subdivision 1 of § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7 related to investigations of applicants for
486 licenses and permits and of licensees and permittees.

487 ~~48. 47.~~ Discussion or consideration of grant or loan application records excluded from this
488 chapter pursuant to subdivision 28 of § 2.2-3705.6 related to the submission of an application for an
489 award from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of
490 Chapter 31 of Title 23.1.

491 ~~49. 48.~~ Discussion or development of grant proposals by a regional council established pursuant
492 to Article 26 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth
493 and Opportunity Board.

494 B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a
495 closed meeting shall become effective unless the public body, following the meeting, reconvenes in
496 open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract,
497 regulation, or motion that shall have its substance reasonably identified in the open meeting.

498 C. Public officers improperly selected due to the failure of the public body to comply with the
499 other provisions of this section shall be de facto officers and, as such, their official actions are valid until
500 they obtain notice of the legal defect in their election.

501 D. Nothing in this section shall be construed to prevent the holding of conferences between two
502 or more public bodies, or their representatives, but these conferences shall be subject to the same
503 procedures for holding closed meetings as are applicable to any other public body.

504 E. This section shall not be construed to (i) require the disclosure of any contract between the
505 Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§

506 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to
507 the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered
508 to issue industrial revenue bonds by general or special law, to identify a business or industry to which
509 subdivision A 5 applies. However, such business or industry shall be identified as a matter of public
510 record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such
511 bonds.

512 **§ 2.2-3712. Closed meetings procedures; certification of proceedings.**

513 A. No closed meeting shall be held unless the public body proposing to convene such meeting
514 has taken an affirmative recorded vote in an open meeting approving a motion that (i) identifies the
515 subject matter, (ii) states the purpose of the meeting as authorized in subsection A of § 2.2-3711 or other
516 provision of law and (iii) ~~makes specific reference to~~ cites the applicable exemption from open meeting
517 requirements provided in ~~§ 2.2-3707 or~~ subsection A of § 2.2-3711 or other provision of law. The
518 matters contained in such motion shall be set forth in detail in the minutes of the open meeting. A
519 general reference to the provisions of this chapter, the authorized exemptions from open meeting
520 requirements, or the subject matter of the closed meeting shall not be sufficient to satisfy the
521 requirements for holding a closed meeting.

522 B. The notice provisions of this chapter shall not apply to closed meetings of any public body
523 held solely for the purpose of interviewing candidates for the position of chief administrative officer.
524 Prior to any such closed meeting for the purpose of interviewing candidates, the public body shall
525 announce in an open meeting that such closed meeting shall be held at a disclosed or undisclosed
526 location within 15 days thereafter.

527 C. The public body holding a closed meeting shall restrict its discussion during the closed
528 meeting only to those matters specifically exempted from the provisions of this chapter and identified in
529 the motion required by subsection A.

530 D. At the conclusion of any closed meeting, the public body holding such meeting shall
531 immediately reconvene in an open meeting and shall take a roll call or other recorded vote to be
532 included in the minutes of that body, certifying that to the best of each member's knowledge (i) only

533 public business matters lawfully exempted from open meeting requirements under this chapter and (ii)
534 only such public business matters as were identified in the motion by which the closed meeting was
535 convened were heard, discussed or considered in the meeting by the public body. Any member of the
536 public body who believes that there was a departure from the requirements of clauses (i) and (ii), shall
537 so state prior to the vote, indicating the substance of the departure that, in his judgment, has taken place.
538 The statement shall be recorded in the minutes of the public body.

539 E. Failure of the certification required by subsection D to receive the affirmative vote of a
540 majority of the members of the public body present during a meeting shall not affect the validity or
541 confidentiality of such meeting with respect to matters considered therein in compliance with the
542 provisions of this chapter. The recorded vote and any statement made in connection therewith, shall
543 upon proper authentication, constitute evidence in any proceeding brought to enforce the provisions of
544 this chapter.

545 F. A public body may permit nonmembers to attend a closed meeting if such persons are deemed
546 necessary or if their presence will reasonably aid the public body in its consideration of a topic that is a
547 subject of the meeting.

548 G. A member of a public body shall be permitted to attend a closed meeting held by any
549 committee or subcommittee of that public body, or a closed meeting of any entity, however designated,
550 created to perform the delegated functions of or to advise that public body. Such member shall in all
551 cases be permitted to observe the closed meeting of the committee, subcommittee or entity. In addition
552 to the requirements of § 2.2-3707, the minutes of the committee or other entity shall include the identity
553 of the member of the parent public body who attended the closed meeting.

554 H. Except as specifically authorized by law, in no event may any public body take action on
555 matters discussed in any closed meeting, except at an open meeting for which notice was given as
556 required by § 2.2-3707.

557 I. Minutes may be taken during closed meetings of a public body, but shall not be required. Such
558 minutes shall not be subject to mandatory public disclosure.

559 **§ 10.1-104.7. Resource management plans; effect of implementation; exclusions.**

560 A. Notwithstanding any other provision of law, agricultural landowners or operators who fully
561 implement and maintain the applicable components of their resource management plan, in accordance
562 with the criteria for such plans set out in § 10.1-104.8 and any regulations adopted thereunder, shall be
563 deemed to be in full compliance with (i) any load allocation contained in a total maximum daily load
564 (TMDL) established under § 303(d) of the federal Clean Water Act addressing benthic, bacteria,
565 nutrient, or sediment impairments; (ii) any requirements of the Virginia Chesapeake Bay TMDL
566 Watershed Implementation Plan; and (iii) applicable state water quality requirements for nutrients and
567 sediment.

568 B. The presumption of full compliance provided in subsection A shall not prevent or preclude
569 enforcement of provisions pursuant to (i) a resource management plan or a nutrient management plan
570 otherwise required by law for such operation, (ii) a Virginia Pollutant Discharge Elimination System
571 permit, (iii) a Virginia Pollution Abatement permit, or (iv) requirements of the Chesapeake Bay
572 Preservation Act (§ 62.1-44.15:67 et seq.).

573 C. Landowners or operators who implement and maintain a resource management plan in
574 accordance with this article shall be eligible for matching grants for agricultural best management
575 practices provided through the Virginia Agricultural Best Management Practices Cost-Share Program
576 administered by the Department in accordance with program eligibility rules and requirements. Such
577 landowners and operators may also be eligible for state tax credits in accordance with §§ 58.1-339.3 and
578 58.1-439.5.

579 D. Nothing in this article shall be construed to limit, modify, impair, or supersede the authority
580 granted to the Commissioner of Agriculture and Consumer Services pursuant to Chapter 4 (§ 3.2-400 et
581 seq.) of Title 3.2.

582 E. Any personal or proprietary information collected pursuant to this article shall be exempt from
583 the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that the Director may release
584 information that has been transformed into a statistical or aggregate form that does not allow
585 identification of the persons who supplied, or are the subject of, particular information. This subsection
586 shall not preclude the application of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) in all

587 | other instances of federal or state regulatory actions. Pursuant to subdivision ~~46~~ 45 of § 2.2-3711, public
588 bodies may hold closed meetings for discussion or consideration of certain records excluded from the
589 provisions of this article and the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

590 **§ 23.1-1303. Governing boards; duties.**

591 A. For purposes of this section, "intellectual property" means (i) a potentially patentable
592 machine, article of manufacture, composition of matter, process, or improvement in any of those; (ii) an
593 issued patent; (iii) a legal right that inheres in a patent; or (iv) anything that is copyrightable.

594 B. The governing board of each public institution of higher education shall:

595 1. Adopt and post conspicuously on its website bylaws for its own governance, including
596 provisions that (i) establish the requirement of transparency, to the extent required by law, in all board
597 actions; (ii) describe the board's obligations under the Virginia Freedom of Information Act (§ 2.2-3700
598 et seq.), as set forth in subdivision B 10 of § 23.1-1301, including the requirements that (a) the board
599 record minutes of each open meeting and post the minutes on the board's website, in accordance with
600 subsection ~~I~~ H of § 2.2-3707 and § 2.2-3707.1, (b) discussions and actions on any topic not specifically
601 exempted by § 2.2-3711 be held in an open meeting, (c) the board give public notice of all meetings, in
602 accordance with subsection C of § 2.2-3707, and (d) any action taken in a closed meeting be approved in
603 an open meeting before it can have any force or effect, in accordance with subsection B of § 2.2-3711;
604 and (iii) require that the board invite the Attorney General's appointee or representative to all meetings
605 of the board, executive committee, and board committees;

606 2. Establish regulations or institution policies for the acceptance and assistance of students that
607 include provisions (i) that specify that individuals who have knowingly and willfully failed to meet the
608 federal requirement to register for the selective service are not eligible to receive any state direct student
609 assistance, (ii) that specify that the accreditation status of a public high school in the Commonwealth
610 shall not be considered in making admissions determinations for students who have earned a diploma
611 pursuant to the requirements established by the Board of Education, and (iii) relating to the admission of
612 certain graduates of comprehensive community colleges as set forth in § 23.1-907;

613 3. Assist the Council in enforcing the provisions relating to eligibility for financial aid;

614 4. Notwithstanding any other provision of state law, establish policies and procedures requiring
615 the notification of the parent of a dependent student when such student receives mental health treatment
616 at the institution's student health or counseling center and such treatment becomes part of the student's
617 educational record in accordance with the federal Health Insurance Portability and Accountability Act
618 (42 U.S.C. § 1320d et seq.) and may be disclosed without prior consent as authorized by the federal
619 Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations (34 C.F.R. Part
620 99). Such notification shall only be required if it is determined that there exists a substantial likelihood
621 that, as a result of mental illness the student will, in the near future, (i) cause serious physical harm to
622 himself or others as evidenced by recent behavior or any other relevant information or (ii) suffer serious
623 harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs.
624 However, notification may be withheld if any person licensed to diagnose and treat mental, emotional,
625 or behavioral disorders by a health regulatory board within the Department of Health Professions who is
626 treating the student has made a part of the student's record a written statement that, in the exercise of his
627 professional judgment, the notification would be reasonably likely to cause substantial harm to the
628 student or another person. No public institution of higher education or employee of a public institution
629 of higher education making a disclosure pursuant to this subsection is civilly liable for any harm
630 resulting from such disclosure unless such disclosure constitutes gross negligence or willful misconduct
631 by the institution or its employees;

632 5. Establish policies and procedures requiring the release of the educational record of a
633 dependent student, as defined by the federal Family Educational Rights and Privacy Act (20 U.S.C. §
634 1232g), to a parent at his request;

635 6. Establish programs to seek to ensure that all graduates have the technology skills necessary to
636 compete in the twenty-first century and that all students matriculating in teacher-training programs
637 receive instruction in the effective use of educational technology;

638 7. Establish policies for the discipline of students who participate in varsity intercollegiate
639 athletics, including a provision requiring an annual report by the administration of the institution to the
640 governing board regarding enforcement actions taken pursuant to such policies;

641 8. In addition to all meetings prescribed in Chapters 14 (§ 23.1-1400 et seq.) through 29 (§ 23.1-
642 2900 et seq.), meet with the chief executive officer of the institution at least once annually, in a closed
643 meeting pursuant to subdivision A 1 of § 2.2-3711 and deliver an evaluation of the chief executive
644 officer's performance. Any change to the chief executive officer's employment contract during any such
645 meeting or any other meeting of the board shall be made only by a vote of the majority of the board's
646 members;

647 9. If human research, as defined in § 32.1-162.16, is conducted at the institution, adopt
648 regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions
649 of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. Such regulations shall require
650 the human research committee to submit to the Governor, the General Assembly, and the chief executive
651 officer of the institution or his designee at least annually a report on the human research projects
652 reviewed and approved by the committee and require the committee to report any significant deviations
653 from approved proposals;

654 10. Submit the annual financial statements for the fiscal year ending the preceding June 30 and
655 the accounts and status of any ongoing capital projects to the Auditor of Public Accounts for the audit of
656 such statements pursuant to § 30-133;

657 11. Submit to the General Assembly and the Governor an annual executive summary of its
658 interim activity and work no later than the first day of each regular session of the General Assembly.
659 The executive summary shall be submitted as provided in the procedures of the Division of Legislative
660 Automated Systems for the processing of legislative documents and reports and shall be posted on the
661 General Assembly's website;

662 12. Make available to any interested party upon request a copy of the portion of the most recent
663 report of the Uniform Crime Reporting Section of the Department of State Police entitled "Crime in
664 Virginia" pertaining to institutions of higher education;

665 13. Adopt policies or institution regulations regarding the ownership, protection, assignment, and
666 use of intellectual property and provide a copy of such policies to the Governor and the Joint
667 Commission on Technology and Science. All employees, including student employees, of public

668 institutions of higher education are bound by the intellectual property policies of the institution
669 employing them; and

670 14. Adopt policies that are supportive of the intellectual property rights of matriculated students
671 who are not employed by such institution.

672 **§ 54.1-2400.2. Confidentiality of information obtained during an investigation or**
673 **disciplinary proceeding; penalty.**

674 A. Any reports, information or records received and maintained by the Department of Health
675 Professions or any health regulatory board in connection with possible disciplinary proceedings,
676 including any material received or developed by a board during an investigation or proceeding, shall be
677 strictly confidential. The Department of Health Professions or a board may only disclose such
678 confidential information:

679 1. In a disciplinary proceeding before a board or in any subsequent trial or appeal of an action or
680 order, or to the respondent in entering into a confidential consent agreement under § 54.1-2400;

681 2. To regulatory authorities concerned with granting, limiting or denying licenses, certificates or
682 registrations to practice a health profession, including the coordinated licensure information system, as
683 defined in § 54.1-3030;

684 3. To hospital committees concerned with granting, limiting or denying hospital privileges if a
685 final determination regarding a violation has been made;

686 4. Pursuant to an order of a court of competent jurisdiction for good cause arising from
687 extraordinary circumstances being shown;

688 5. To qualified personnel for bona fide research or educational purposes, if personally
689 identifiable information relating to any person is first deleted. Such release shall be made pursuant to a
690 written agreement to ensure compliance with this section; or

691 6. To the Health Practitioners' Monitoring Program within the Department of Health Professions
692 in connection with health practitioners who apply to or participate in the Program.

693 B. In no event shall confidential information received, maintained or developed by the
694 Department of Health Professions or any board, or disclosed by the Department of Health Professions or

695 a board to others, pursuant to this section, be available for discovery or court subpoena or introduced
696 into evidence in any civil action. This section shall not, however, be construed to inhibit an investigation
697 or prosecution under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.

698 C. Any claim of a physician-patient or practitioner-patient privilege shall not prevail in any
699 investigation or proceeding by any health regulatory board acting within the scope of its authority. The
700 disclosure, however, of any information pursuant to this provision shall not be deemed a waiver of such
701 privilege in any other proceeding.

702 D. This section shall not prohibit the Director of the Department of Health Professions, after
703 consultation with the relevant health regulatory board president or his designee, from disclosing to the
704 Attorney General, or the appropriate attorney for the Commonwealth, investigatory information which
705 indicates a possible violation of any provision of criminal law, including the laws relating to the
706 manufacture, distribution, dispensing, prescribing or administration of drugs, other than drugs classified
707 as Schedule VI drugs and devices, by any individual regulated by any health regulatory board.

708 E. This section shall not prohibit the Director of the Department of Health Professions from
709 disclosing matters listed in subdivision A 1, A 2, or A 3 of § 54.1-2909; from making the reports of
710 aggregate information and summaries required by § 54.1-2400.3; or from disclosing the information
711 required to be made available to the public pursuant to § 54.1-2910.1.

712 F. This section shall not prohibit the Director of the Department of Health Professions, following
713 consultation with the relevant health regulatory board president or his designee, from disclosing
714 information about a suspected violation of state or federal law or regulation to other agencies within the
715 Health and Human Resources Secretariat or to federal law-enforcement agencies having jurisdiction
716 over the suspected violation or requesting an inspection or investigation of a licensee by such state or
717 federal agency when the Director has reason to believe that a possible violation of federal or state law
718 has occurred. Such disclosure shall not exceed the minimum information necessary to permit the state or
719 federal agency having jurisdiction over the suspected violation of state or federal law to conduct an
720 inspection or investigation. Disclosures by the Director pursuant to this subsection shall not be limited to
721 requests for inspections or investigations of licensees. Nothing in this subsection shall require the

722 Director to make any disclosure. Nothing in this section shall permit any agency to which the Director
723 makes a disclosure pursuant to this section to re-disclose any information, reports, records, or materials
724 received from the Department.

725 G. Whenever a complaint or report has been filed about a person licensed, certified, or registered
726 by a health regulatory board, the source and the subject of a complaint or report shall be provided
727 information about the investigative and disciplinary procedures at the Department of Health Professions.
728 Prior to interviewing a licensee who is the subject of a complaint or report, or at the time that the
729 licensee is first notified in writing of the complaint or report, whichever shall occur first, the licensee
730 shall be provided with a copy of the complaint or report and any records or supporting documentation,
731 unless such provision would materially obstruct a criminal or regulatory investigation. If the relevant
732 board concludes that a disciplinary proceeding will not be instituted, the board may send an advisory
733 letter to the person who was the subject of the complaint or report. The relevant board may also inform
734 the source of the complaint or report (i) that an investigation has been conducted, (ii) that the matter was
735 concluded without a disciplinary proceeding, (iii) of the process the board followed in making its
736 determination, and (iv), if appropriate, that an advisory letter from the board has been communicated to
737 the person who was the subject of the complaint or report. In providing such information, the board shall
738 inform the source of the complaint or report that he is subject to the requirements of this section relating
739 to confidentiality and discovery.

740 H. Orders and notices of the health regulatory boards relating to disciplinary actions, other than
741 confidential exhibits described in subsection K, shall be disclosed. Information on the date and location
742 of any disciplinary proceeding, allegations against the respondent, and the list of statutes and regulations
743 the respondent is alleged to have violated shall be provided to the source of the complaint or report by
744 the relevant board prior to the proceeding. The source shall be notified of the disposition of a
745 disciplinary case.

746 I. This section shall not prohibit investigative staff authorized under § 54.1-2506 from
747 interviewing fact witnesses, disclosing to fact witnesses the identity of the subject of the complaint or

748 report, or reviewing with fact witnesses any portion of records or other supporting documentation
749 necessary to refresh the fact witnesses' recollection.

750 J. Any person found guilty of the unlawful disclosure of confidential information possessed by a
751 health regulatory board shall be guilty of a Class 1 misdemeanor.

752 K. In disciplinary actions in which a practitioner is or may be unable to practice with reasonable
753 skill and safety to patients and the public because of a mental or physical disability, a health regulatory
754 board shall consider whether to disclose and may decide not to disclose in its notice or order the
755 practitioner's health records, as defined in § 32.1-127.1:03, or his health services, as defined in § 32.1-
756 127.1:03. Such information may be considered by the relevant board in a closed hearing in accordance
757 with subsection A-~~15~~16 of § 2.2-3711 and included in a confidential exhibit to a notice or order. The
758 public notice or order shall identify, if known, the practitioner's mental or physical disability that is the
759 basis for its determination. In the event that the relevant board, in its discretion, determines that this
760 subsection should apply, information contained in the confidential exhibit shall remain part of the
761 confidential record before the relevant board and is subject to court review under the Administrative
762 Process Act (§ 2.2-4000 et seq.) and to release in accordance with this section.

763 **2. That the provisions of subdivisions A 7, 8, 12, 32, 35, 37, 39, 42, 43, 44, 45, and 46 of § 2.2-3711**
764 **of this act are declaratory of existing law.**

765 #